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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

JOSEFA GODINEZ MERIDA, et al.,)	Civil No.09cv0227 BEN (AJB)
)	
Plaintiff,)	
v.)	Order on Joint Statement
)	Re: Discovery Dispute
CITY OF SAN DIEGO, et al.,)	
)	[Doc. No. 27]
Defendants.)	
_____)	

On May 14, 2010, the parties filed a joint statement regarding a discovery dispute involving an 83 page Internal Affairs (“IA”) memo pertaining to Officer Galante’s October 26, 2006 accidental discharge of another officer’s firearm while off duty. The IA memo was simultaneously submitted for in camera review by this Court. The Plaintiff contends the requested information is relevant not only to the issue of whether Defendant Paul Galante’s use of deadly force on February 10, 2007 in discharging his firearm was justified, but is also relevant to the issue of whether Defendant San Diego Police Department (“SDPD”) properly trained, supervised and disciplined Defendant Galante’s negligent or deliberate discharge of firearms. The Defendant’s object to disclosure of the IA memo based on claims of official privilege, state law, and lack of relevance to the Plaintiff’s claim.

Relevant Factual Background

The Plaintiff commenced this action against Officer Paul Galante, Officer Jack Pearson, the San Diego Chief of Police, William Landsdowne, and the San Diego Police Department by filing a complaint on February 6, 2009, alleging the following causes of action: 1) violation of the right of

1 familial association under 42 U.S.C. §1983; 2) a Monell claim based upon the right of association; 3) a
 2 wrongful death claim under 42 U.S.C. §1983; 4) a Monell claim based upon wrongful death; 5)
 3 excessive force claim under 42 U.S.C. §1983; 6) a Monell claim based upon the use of excessive force;
 4 7) a Monell claim based upon the failure to properly screen and hire; 8) a Monell claim based upon the
 5 failure to properly train; and 9) a Monell claim based upon the failure to properly supervise and
 6 discipline. *See* Doc. No. 1.

7 These claims arose out of the wrongful death of Noe Rojas, a seventeen year old boy who was
 8 shot and killed by Defendants, SDPD Officers Jack Pearson and Paul Galante on February 10, 2007. *Id.*
 9 at 3. The incident in question occurred after Officers Pearson and Galante pulled Noe Rojas over for
 10 making an illegal u-turn and fired seventeen rounds, striking him eight times and causing his death. *Id.*
 11 Officer Galante fired fourteen of the seventeen rounds. Noe Rojas was unarmed at the time and died at
 12 the scene. *Id.* at 4.

13 On October 9, 2010, Plaintiff served a request for production of documents and the Defendants
 14 produced a privilege log from which the Plaintiffs narrowed the scope of their request. Among the
 15 documents withheld by Defendants was an 83 page IA file regarding Officer Galante's 2006 accidental
 16 discharge of another officer's firearm while off duty.

17 Discussion

18 Federal Rule of Civil Procedure 26(c) provides that a court may limit discovery to protect from
 19 annoyance, embarrassment, oppression, or undue burden or expense. Federal common law recognizes a
 20 qualified privilege for official information. *Kerr v. United States Dist. Ct. for N.D. Cal.*, 511 F.2d 192,
 21 198 (9th Cir.1975), *aff'd*, 426 U.S. 394, 96 S.Ct. 2119, 48 L.Ed.2d 725 (1976). Government personnel
 22 files are considered official information. *See, e.g., Zaustinsky v. University of Cal.*, 96 F.R.D. 622, 625
 23 (N.D. Cal.1983), *aff'd*, 782 F.2d 1055 (9th Cir.1985). In determining what level of protection to afford
 24 the official information privilege, courts balance the interests of the party seeking discovery against the
 25 interests of the governmental entity asserting the privilege. *See Kelly v. City of San Jose*, 114 F.R.D.,
 26 653, 660 (N.D. Cal. 1987). The party requesting the information must describe how the information
 27 sought is "reasonably calculated to lead to discovery of admissible evidence, identifying interests . . .
 28 that would be harmed if the material were not disclosed, and specifying how that harm would occur and

1 how extensive it would be.” *Id.* at 671. The courts must weigh the potential benefits of disclosure
 2 against the potential disadvantages. If the latter is greater, the privilege bars discovery. *Sanchez v. City*
 3 *of Santa Ana*, 936 F.2d 1027, 1034 (9th Cir. 1990); *Jepsen v. Florida Bd. of Regents*, 610 F.2d 1379,
 4 1384-85 (5th Cir.1980); *Zaustinsky*, 96 F.R.D. at 625.

5 At issue in this motion is an 83 page IA report discussing Officer Galante’s accidental discharge
 6 of another officer’s firearm while off duty. In examining the Plaintiff’s request for this report, the Court
 7 looks at: 1) the relevancy of the information to the claims or defenses in this case; 2) the availability of
 8 the information from other sources; and 3) the relative proximity of these two events. The Plaintiff
 9 asserts that the IA report is relevant to the investigation, discipline, training and supervision of Officer
 10 Galante by the SDPD after the first allegation of misuse of a firearm as well as the Plaintiff’s *Monnel*
 11 claims. The Court has reviewed the IA report and finds that it is relevant for discovery purposes
 12 regarding the Plaintiff’s claims, the information is not available from another source and there was less
 13 than four months between the accidental discharge by Officer Galante on October 26, 2006 and Officer
 14 Galante’s February 10, 2007 use of deadly force which is the subject of the instant complaint.

15 The Defendants’ argue that the Court should deny the Plaintiff’s motion. Defendants contend,
 16 based on the declaration of the Executive Assistant Chief of Police David Ramirez, that the privilege
 17 against disclosure of official information should apply here and preclude disclosure.¹ However, because
 18 the qualified privilege against disclosure of information is not absolute and is subjected to a balancing
 19 test,² a general claim of harm to the public interest is not sufficient to overcome the Defendant’s burden.
 20 *See Kelly v. City of San Jose*, 114 F.R.D., 653, 660 (N.D. Cal. 1987). The Court has found the IA report
 21 to be relevant to the Plaintiff’s claims and the need for this information far outweighs the potential
 22 disadvantages of disclosure. Here, as in other civil rights cases against police departments, the IA report
 23 sought by the Plaintiff is in the possession of the SDPD and substitute documentation can not be

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 25 ¹ Specifically, the Defendants argue that disclosure will undermine the ability of the SDPD to
 26 conduct fair and through investigations into complaints of police misconduct, will erode the confidence
 27 of police officers and citizens involved in the investigatory process, will undermine and negatively
 28 affect the morale of all police officers in the SDPD, and will seriously disrupt the operation of the
 SDPD.

² In the context of civil rights suits against police departments, this balancing approach should be
 “moderately pre-weighted in favor of disclosure.” *See Kelly v. City of San Jose*, 114 F.R.D., 653, 661
 (N.D. Cal.1987).


1 provided by a comparable source. Moreover, the Defendant's concern, as expressed by Chief of Police
2 David Ramirez, can be minimized by a carefully drafted protective order. *Sanchez v. City of Santa Ana*,
3 936 F.2d 1027, 1034 (9th Cir. 1990); *Jepsen v. Florida Bd. of Regents*, 610 F.2d 1379, 1384-85 (5th
4 Cir.1980); *Zaustinsky*, 96 F.R.D. at 625. However, while the Plaintiff asserts that a "carefully drafted
5 protective order, [is one in which] only the Plaintiff and his lawyer have access to the material," given
6 the Defendants concerns and the sensitive nature of the IA report, the Court sees no need for the
7 Plaintiff to have access.

8 **Conclusion**

9 For the reasons set forth above, Plaintiffs' motion to compel is hereby GRANTED. The parties
10 are ORDERED to meet and confer regarding the terms of the protective order and to filed a joint motion
11 for protective order *on or before July 16, 2010*. Defendants shall produce the IA report to Plaintiff's
12 counsel *within five (5) days of the protective order being approved by this Court*.

13 IT IS SO ORDERED.

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15 DATED: July 1, 2010

16 
17 Hon. Anthony J. Battaglia
18 U.S. Magistrate Judge
19 United States District Court
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